

**STATE OF COLORADO**  
**Department of State**

1700 Broadway  
Suite 250  
Denver, CO 80290

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**Wayne W. Williams**  
Secretary of State

**Suzanne Staiert**  
Deputy Secretary of State

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January 7, 2016

Mr. Chris Pratt  
Assistant County Attorney  
Douglas County  
100 Third Street  
Castle Rock, Colorado 80104

Re: Your Request for a Regulatory Analysis of Proposed Election Rule 11.9.2

Mr. Pratt,

I am in receipt of your letter, dated December 28, 2015, requesting a regulatory analysis of proposed election rule 11.9.2.<sup>1</sup> In accordance with section 24-4-103 (4.5), C.R.S., I've included the regulatory analysis below.

**Description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:**

*Classes affected by the proposed rule:*

- County taxpayers
- Colorado voters
- Boards of County Commissioners
- County Clerks and Recorders
- Colorado Secretary of State
- Candidates for office in Colorado
- Committees supporting or opposing ballot issues and questions

*Classes that will bear the costs of the proposed rule:*

- County taxpayers

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<sup>1</sup> 11.9.2 A political subdivision may only purchase or lease a certified voting system OR COMPONENT if:  
(a) ~~The contract contains training and maintenance costs; and~~ THE SECRETARY OF STATE CERTIFIED THE VOTING SYSTEM BEFORE JANUARY 1, 2015. OR  
(b) ~~The voting system components and accessories appear complete and capable of successfully conducting an election in Colorado.~~ THE SECRETARY OF STATE CERTIFIED AND SELECTED THE VOTING SYSTEM AS COLORADO'S UNIFORM VOTING SYSTEM ON OR AFTER DECEMBER 15, 2015.

*Classes that will benefit from the proposed rule:*

- County taxpayers
- Colorado voters
- Colorado voters with disabilities
- Boards of County Commissioners
- County Clerks and Recorders
- Colorado Secretary of State
- Candidates for office in Colorado
- Committees supporting or opposing ballot issues and questions

**Description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons:**

*Quantitative impact:*

- The proposed rule will allow the Secretary to adopt fewer, more uniform rules that are specifically tailored to the use and security of a single voting system.
- The rule will also allow the Secretary to prescribe specific procedures for the uniform administration of title 1 elections throughout Colorado.
- Finally, the proposed rule will reduce the amount of time currently required for the Secretary of State's office and county election officials to ensure that the voting system interfaces seamlessly with other dependent technologies, such as:
  - Importing election definition data from SCORE into the voting system's election management sub-system;
  - The Election Night Reporting system;
  - The electronic ballot delivery system for military and overseas voters;
  - Ballot-on-demand systems; and
  - Ballot-level cast vote record exports from the voting system required by the statewide implementation of risk-limiting audits, obviating the need for counties to acquire completely independent auditing systems at additional expense.

*Qualitative impact:*

- The proposed rule will allow the Secretary of State's office to better support counties in the programming, use, and security of the voting system, at no cost to counties.
- The proposed rule will allow the Secretary of State's office to develop a streamlined, online training for the programming, use, and security of a single voting system, minimizing the need for onsite training by the voting system provider, which will reduce costs to counties.
- In the event of high staff turnover, natural disaster, or other disrupting event, the rule will allow counties to cross-train and support each other on the single voting system. Currently, such support is limited to the other counties with the same system provider. This enhanced support capability by the state and other counties would come at no cost to counties and may significantly decrease other costs.

- The proposed rule will also allow the Secretary of State's office to develop a uniform ballot template among the counties, increasing voter and staff familiarity and lessening confusion among Colorado's highly mobile voting population.
- Finally, the proposed rule will aid voters with disabilities. Due to Colorado's highly mobile population, voters often move between counties. When a uniform voting system is fully implemented in Colorado, the proposed rule will allow a voter with a disability to learn and use a single accessible voting device, without regard to the county in which he or she resides.

**The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:**

- The adoption, implementation, and enforcement of the proposed rule would come at no cost to the Secretary of State's office or any other state agency. Further, the rule would have no negative effect on state revenues.

**Comparison of the probable costs and benefits of the proposed rules to the probable costs and benefits of inaction:**

*Probable costs of the proposed rule:*

- None. Counties have always been required to pay for title 1 elections, and the proposed rule does not alter that responsibility.

*Probable benefits of the proposed rule:*

- The proposed rule will result in more uniform conduct and administration of title 1 elections in Colorado.
- The rule will provide more security for the purity, and will guard against abuses, of elections in Colorado.
- The rule will allow for more specific future rules and procedures governing the programming, use, and security of the voting system.
- As mentioned above, the rule will give the Secretary of State's office and other counties the ability to provide specific support to counties requiring technical assistance due to staff turnover, natural disaster, or other disrupting event.
- The rule allows for the uniform implementation of mandated risk-limiting audits of both state and local contests.
- The rule allows the Secretary of State to provide uniform ballot templates, minimizing confusion for voters and county elections staff.
- The proposed rule would also minimize the currently time-consuming and expensive task of interfacing several different voting systems with dependent technologies.
- The new rule will allow most if not all interested counties to acquire a uniform voting system without devoting significant time, energy, and money to engage in the competitive procurement process.

- The rule will allow the Secretary of State's office, on behalf of the counties, to negotiate a standard price point and support terms with a single provider. This means the office can leverage the state's negotiating and purchasing power for the benefit of all counties.

*Probable costs of inaction:*

- If no action is taken, numerous counties will have to expend significant sums to maintain, repair, and replace components of their existing voting systems. All of the legacy systems are largely obsolete because they are based on dated technology and were designed for elections conducted in Colorado before 2013. The proposed rule will permit these counties to expend those monies to acquire a modern voting system that is better suited to the demands of Colorado's current mail ballot election model.
- Numerous counties have indicated they must move to a new voting system because their legacy voting systems have reached or surpassed the end of their useful lives. The Secretary of State's office may not have sufficient technical and human resources to certify and test, and oversee the deployment, installation, and use of, more than one voting system before the 2016 Primary Election. If no action is taken, all Colorado counties will have to use their legacy systems throughout the 2016 Presidential Election cycle, which creates risks of failure and litigation to counties with obsolete systems.
- If no action is taken, counties will pay higher costs for onsite training of new election staff members from the various voting systems providers, rather than receiving training without cost from the Secretary of State's office or a neighboring county.
- If no action is taken, counties that decide not to acquire the full election management subsystem will have to pay the various voting systems providers to individually program elections databases and devices, rather than obtaining those services without cost from the Secretary of State's office or a neighboring county.
- Without the rule, both the Secretary of State's office and the counties will continue to spend a large number of hours forcing interface between the various voting systems and dependent technologies.
- Finally, without the rule, counties will be unable to leverage the state's negotiating and purchasing power, resulting in higher costs.

*Benefits of inaction:*

- Each county will be able to purchase whatever voting system it chooses without regard to price or capabilities, assuming the Secretary of State has the technical and human resources to certify and test, and oversee the deployment, installation and use of, more than one voting system

**Determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:**

- There is no less costly or intrusive method to implement a uniform voting system.

**Description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:**

- There are no alternative methods for implementing a uniform voting system.

Dated this 7th day of January, 2016.



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Suzanne Staiert  
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(303) 894-2200

December 28, 2015

Suzanne Staiert  
Deputy Secretary of State  
1700 Broadway Suite 200  
Denver, Colorado 80290

Re: Request for Regulatory Analysis of Proposed Changes to Election Rules

Ms. Staiert,

Pursuant to §24-4-103(4.5), C.R.S., the Douglas County Clerk and Recorder would like to request a regulatory analysis of the proposed amendment to Rule 11.9.2 of 8 C.C.R. 1505-1. Given that the SoS has selected the Dominion voting system as the Colorado Uniform Voting System - the only certified system for any County in the state to use, the new language proposed for this rule appears intended to prevent the use of any other election voting system. We would like the analysis to focus in particular on the following questions: Who will bear the costs of requiring all counties to switch to the Dominion system and what will those costs be? What would be the effect of not changing this rule at all (i.e. not creating a state mandated election system monopoly)? What less costly or intrusive alternatives to this rule change were considered and why were they rejected?

We are aware that there is not much time before the January 14th hearing and it is our intent by limiting the scope of this request to only the proposed changes to rule 11.9.2 that it will facilitate a thorough and helpful analysis. If you have any questions or concerns please feel free to contact me.

Respectfully,



Chris Pratt  
Assistant County Attorney